



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2017-0079]**

**RIN 1625-AA87**

**Security Zone; Delaware River, Schuylkill River; Philadelphia, PA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is establishing a permanent security zone within portions of the Delaware River, and Schuylkill River, for the protection of Very Important Persons (VIP) who arrive or depart from Philadelphia International Airport, Philadelphia, PA. This permanent rule will allow for the expedited enforcement of the security zone when short notice is received by the Coast Guard regarding such travel arrangements. The security zone will be enforced only during times of a protected VIP transit to or from the airport and will restrict vessel traffic while the zone is being enforced. Only vessels or people specifically authorized by the Captain of the Port, Delaware Bay, or designated representative, may enter or remain in the regulated area.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0079 in the “SEARCH” box

and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rulemaking, call or email Petty Officer Amanda Boone, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, Coast Guard; telephone (215) 271-4814, e-mail [Amanda.N.Boone@uscg.mil](mailto:Amanda.N.Boone@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

**II. Background Information and Regulatory History**

On occasion, protected VIPs will arrive or depart Philadelphia International Airport, Philadelphia, PA, which is located within the Coast Guard Sector Delaware Bay Captain of the Port (COTP) zone. These visits require the implementation of heightened security measures for protection of VIPs who may travel over or on portions of the Delaware River or Schuylkill River on their route to or from the airport. The purpose of this rulemaking is to protect the VIP and the public from destruction, loss, or injury from sabotage, subversive acts, or other malicious or potential terrorist acts. This rule will allow expedited enforcement of the security zone for protected VIPs traveling to or from Philadelphia International Airport when short notice is provided to the COTP.

On May 15, 2017, the Coast Guard published a notice of proposed rulemaking (NPRM) titled "Security Zone; Delaware River, Schuylkill River, Philadelphia, PA" (82

FR 22301). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this proposed permanent security zone. During the comment period that ended June 14, 2017, we received one comment.

### **III. Legal Authority and Need for Rule**

The Coast Guard is establishing this rulemaking under authority in 33 U.S.C. 1231. The purpose of this rulemaking is to protect VIPs and the public from destruction, loss, or injury from sabotage, subversive acts, or other malicious or potential terrorist acts.

### **IV. Discussion of Comments, Changes, and the Rule**

#### *A. Discussion of Comments*

As noted above, we received one comment on our NPRM published May 15, 2017. The comment had seven questions regarding establishment of the permanent security zone.

1. *Necessity of zone.* The commenter asked about the relevance of the security zone and requested that the Coast Guard provide assurance that the implementation of the security zone is necessary.

*Response:* The Coast Guard has historically implemented security zones of this general size in this general location when notified by the U.S. Secret Service that a protected VIP will be transiting to or from the Philadelphia International Airport. Often, there has been little advanced notice to the Coast Guard associated with these requests. The security zone itself is a necessary tool to protect traveling VIPs and the public from destruction, loss, or injury from sabotage, subversive acts, or other malicious or potential terrorist acts. No specific threats have been identified; however, the airport's proximity to

the Delaware River and Schuylkill River expose it to some waterborne risks. Although permanent, the security zone will only be enforced during times a VIP is arriving or departing from the Philadelphia International Airport. The security zone can only be used for this specific purpose. Any further restrictions or events that may require a security zone, not related to the movement of VIPs to or from the airport, will be conducted through separate rulemaking action.

In the past, similar temporary security zones in this general area have been established in order to provide protection for traveling VIPs. The creation of security zones in this manner, by necessity, has limited opportunity to the public for advanced notification of establishment and enforcement procedures and intentions. While this rule does not provide the exact times and dates that the security zone will be enforced, the resulting public awareness better serves the maritime community and industry operating on this portion of the Delaware River by establishing a pre-determined location and guidelines in the event of activation. The establishment of this permanent security zone provides the best opportunity for public awareness and notification. This regulatory text has been amended to include this limitation.

2. *Advance notification of enforcement.* The commenter asked how much advanced notice the Coast Guard anticipates giving the maritime community prior to enforcing the security zone.

*Response:* The Coast Guard will enforce this security zone for the protection of VIPs. The details of a protected VIP's movements are of national security significance and therefore cannot be publicized in advance. The Coast Guard will give as much on-scene notice as possible to allow the maritime community to make changes to their

schedules. Advance on-scene notice under this permanent security zone will be consistent with past temporary security zones for VIP travel. On-scene notification will be made to the local maritime community by issuance of Local Notice to Mariners, Broadcast Notice to Mariners, Marine Safety Information Bulletin (MSIB) as well as actual notice.

Additionally, law enforcement vessels enforcing the security zone will be operating with rotating blue lights which will indicate activation of the security zone; the blue lights will be turned off to notify public of deactivation of the security zone. We have amended the regulatory text for additional clarity in regards to how notification will be provided.

3. *Average time of enforcement.* The commenter asked about the average length of enforcement.

*Response:* In the past, similar temporary security zones in this area have been established in order to provide protection for traveling VIPs. These previously established security zones have historically lasted anywhere from 15 minutes to 2 hours from start to finish. Although we cannot predict the length of the enforcement of the permanent security zones during each activation, we expect that length of time for enforcement of the security zone will stay within the 15 minute to 2 hours time frame.

4. *Notification of enforcement period.* The commenter requested that the Coast Guard's notification to the public of the security zone include the duration of the enforcement and that Coast Guard issue separate communication to the public when the enforcement period is over.

*Response:* The Coast Guard Sector Delaware Bay Command Center will provide a notice of the enforcement of the security zone via marine broadcast. On scene, the Patrol Commander will notify the maritime community of the time periods for the

enforcement of the security zone via marine broadcast and other means as needed per 33 CFR 165.7.

5. *Access while the zone is in effect.* The commenter asked the Coast Guard to indicate those critical criteria that would preclude a vessel from remaining in or transiting through the zone while the zone is being enforced and to outline the process for gaining approval to remain in or transit through the security zone.

*Response:* The Coast Guard will assess a vessel wishing to remain in or transit through the security zone on a case by case basis. Vessel details, such as location, size, cargo, and transit history, will be evaluated to determine who may or may not remain in or transit through the security zone. The Coast Guard will evaluate this information internally and give direction to the Patrol Commander enforcing the security zone. Vessels wishing to transit or remain in the zone must contact and request permission from the Patrol Commander via VHF-FM channel 13 or 16.

6. *Ships/barges at the berth or anchorage for cargo and/or bunkering operations.* The commenter asked that the Coast Guard to continue to allow vessels anchored or at berth to continue to conduct cargo and bunkering operations while the Coast Guard is enforcing the security zone. Historically, cargo and bunkering operations have been allowed during the implementation and enforcement of this temporary security zone.

*Response:* The Coast Guard does not anticipate requiring ships or barges at berths or anchorages within the security zone to stop cargo or bunkering operations during the enforcement of the security zone unless the transfer operations pose a hazard during the enforcement period.

7. *Maritime Transportation System Recovery Unit (MTSRU)*. The commenter asked the Coast Guard to stand up the Maritime Transportation System Recovery Unit (MTSRU) to mitigate any issues and have a standardized location for communication.

*Response:* The Coast Guard does not intend to stand up the MTSRU when enforcing the security zone because historically enforcement periods have been so short that MTSRU is not required. If an event significantly disrupts traffic, the Coast Guard will establish a MTSRU. Otherwise, Sector Delaware Bay's Command Center, manned 24 hours, is the point of contact for any issues regarding vessel intentions and traffic management issues, and can address emergent traffic or operations issues.

#### *B. Changes from the NPRM*

We made four changes in the regulatory text of this rule from the proposed rule in the NPRM. First, we noted that the coordinates listed in paragraph (a), Location, use North American Datum 83. Second, we made stylistic changes to the format of the contents of paragraph (b), Definitions. Third, within paragraph (b), Definitions, we defined the meanings and intent of the term Very Important Person (VIP). Fourth, we have amended paragraph (d), Enforcement, to specifically state that the security zone can only be used in relation to the movement of VIPs to or from the Philadelphia International Airport.

#### *C. The Rule*

This rule establishes a permanent security zone on all waters of the Delaware River in the vicinity of Philadelphia International airport, within an area bound to the west by a line drawn from the New Jersey shoreline at Thompson Point, latitude 39° 50' 37"N., longitude 75° 18' 23"W., thence northwest to the Pennsylvania shoreline at

latitude 39°51'45"N., longitude 75°18'46"W.; thence up river and bound shoreline to shoreline; bound to the east by a line drawn from the New Jersey shoreline at latitude 39°52'28"N., longitude 75°11'14"W., and thence northwest to the Pennsylvania shoreline near the eastern side of mouth to the Schuylkill River at latitude 39°53'05"N., longitude 75°11'34"W.; the security zone extends north into the waters of Schuylkill River, bound from shoreline to shoreline, including the waters of Schuylkill River adjacent to the Navy Yard Reserve Basin Bridge, and terminates along a line drawn from latitude 39°54'04"N., longitude 75°12'56"W., thence eastward across the Schuylkill River to latitude 39°54'07"N., longitude 75°12'48"W, located approximately 500 yards northwest and parallel with the George C. Platt Memorial – Penrose Avenue lift-bridge. This security zone will be enforced with actual notice by the U. S. Coast Guard representatives on scene, as well as other methods listed in 33 CFR 165.7.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to



OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action is based on the security zone's size, location, and duration. Although the security zone area covers a large portion of the navigable waterways, mariners may request permission from COTP Coast Guard Sector Delaware Bay or the designated representative to transit or remain in the security zone. Furthermore, the duration of the security zone would not significantly impact vessels because of the small amount of time it takes for protected VIP to transit to or from the airport. Advance notifications will be made to the local maritime community by issuance of Local Notice to Mariners, Broadcast Notice to Mariners, and MSIB so mariners can adjust their plans accordingly.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received one comment from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act

of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175,

Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone generally lasting no more than 2 hours, which will restrict vessels from anchoring or transiting in portions of the Delaware River while protected VIPs arrive or depart from the Philadelphia International Airport. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant

Instruction. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.558 to read as follows:

#### **§ 165.558 Security Zone; Delaware River, and Schuylkill River, Philadelphia, PA.**

(a) Location. The following area is a security zone: All waters of the Delaware River in the vicinity of Philadelphia International Airport, within an area bound to the west by a line drawn from the New Jersey shoreline at Thompson Point, latitude 39° 50' 37"N., longitude 75° 18' 23"W., thence northwest to the Pennsylvania shoreline at

latitude 39°51'45"N., longitude 75°18'46"W.; thence up river and bound shoreline to shoreline; bound to the east by a line drawn from the New Jersey shoreline at latitude 39°52'28"N., longitude 75°11'14"W., and thence northwest to the Pennsylvania shoreline near the eastern side of mouth to the Schuylkill River at latitude 39°53'05"N., longitude 75°11'34"W.; the security zone extends north into the waters of Schuylkill River, bound from shoreline to shoreline, including the waters of Schuylkill River adjacent to the Navy Yard Reserve Basin Bridge, and terminates along a line drawn from latitude 39°54'04"N., longitude 75°12'56"W., thence eastward across the Schuylkill River to latitude 39°54'07"N., longitude 75°12'48"W, located approximately 500 yards northwest and parallel with the George C. Platt Memorial – Penrose Avenue lift-bridge. These coordinates are based on North American Datum 83 (NAD83).

(b) Definitions. As used in this section--

Designated representative means any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

Official patrol vessel means any Coast Guard, Coast Guard Auxiliary, State, or local law enforcement vessel assigned or approved by the COTP.

Very important person (VIP) means any person for whom the United States Secret Service requests implementation of a security zone in order to supplement protection of said person(s).

(c) Regulations. (1) In accordance with the general regulations contained in § 165.33, entry into or movement within this zone is prohibited unless authorized by the COTP, Sector Delaware Bay, or designated representative.

(2) Only vessels or people specifically authorized by the Captain of the Port, Delaware Bay, or designated representative, may enter or remain in the regulated area. To request permission to enter or remain in the regulated area contact the COTP or the COTP's representative on VHF-FM channel 13 or 16. Vessel operators and persons within the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. No person may swim upon or below the surface of the water of this security zone unless authorized by the COTP or his designated representative.

(3) Upon being hailed by an official patrol vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with lawful direction may result in expulsion from the regulated area, citation for failure to comply, or both.

(d) Enforcement. This security zone will be enforced with actual notice by the U.S. Coast Guard representatives on scene, as well as other methods listed in § 165.7. The Coast Guard will enforce the security zone created by this section only when it is necessary for the protection of VIPs traveling to or from the Philadelphia International Airport. The U.S. Coast Guard may be additionally assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

Dated: February 9, 2018.

Scott E. Anderson,  
Captain, U. S. Coast Guard,  
Captain of the Port, Delaware Bay.  
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